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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/120,303 09/13/93 JACOBS

P. JIM

EXAMINER

JOHNSTON, J

18M1/1216

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ART UNIT

PAPER NUMBER

18

1809

DATE MAILED:

12/16/93

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on 9-13-93 ☒ This action is made final. *(Preliminary Amdt.)*

A shortened statutory period for response to this action is set to expire 3 month(s), \_\_\_\_\_ days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892.        | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948.                   |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.             | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____  |

Part II SUMMARY OF ACTION

1. ☒ Claims 11-22 are pending in the application.

Of the above, claims \_\_\_\_\_ are withdrawn from consideration.

2. ☒ Claims 1-10 have been cancelled.

3. ☐ Claims \_\_\_\_\_ are allowed.

4. ☒ Claims 11 and 17-20 are rejected.

5. ☒ Claims 12-16 and 21-22 are objected to.

6. ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable. ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed on \_\_\_\_\_, has been ☐ approved. ☐ disapproved (see explanation).

12. ☐ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received  
☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

EXAMINER'S ACTION

Best Available Copy

The disclosure is objected to because of the following informalities: In the insert to the specification, before the first line thereof, all the parent applications and there status should be listed in a single paragraph. The prior inserts should be deleted and replaced with this paragraph. Appropriate correction is required.

Claim 17 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 17, line 3, is the "measured aliquot of antimicrobial solution" in addition to the "known quantity of antimicrobial solution" of claim 11?

Claim 17 is rejected under 35 U.S.C. § 112, fourth paragraph, as being of improper dependent form for failing to further limit the subject matter of a previous claim. Claim 11 is limited to a vessel with a single opening which is otherwise closed to the ambient atmosphere. See M.P.E.P. §§ 706.03(n) and 706.03(z).

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as

prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

The factual inquiries set forth in Graham v. John Deere Co., 383 U.S. 1, 86 S.Ct. 684, 15 L.Ed. 2nd 545 (1966), 148 USPQ 459, that are applied for establishing a background for determining obviousness under 35 U.S.C. § 103 are summarized as follows:

1. Determining the scope and contents of the prior art;
2. Ascertaining the differences between the prior art and the claims at issue; and
3. Resolving the level of ordinary skill in the pertinent art.

Claims 11 and 18-20 are rejected under 35 U.S.C. § 103 as being unpatentable over Wyka.

Wyka teaches a disinfectant-crystal vaporizing device. The device is a container having the disinfectant crystals therein. The container connects to a hose to allow air to flow through the container, vaporizing the disinfectant. The difference between the device of Wyka and that of the instant claims is the specific inclusion of an antimicrobial solution in the instant claims instead of the crystals of Wyka. It would have been obvious to one of ordinary skill in the art to modify the device of Wyka in order to provide solution-containing porous solids instead of crystals which sublime to form the disinfecting vapor. A solid-containing solution would be more readily vaporizable than the crystals, delivering the disinfectant most expeditiously.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Those same references cited in the prosecution of the parent application are also cited here. Copies are not being provided, however, as they were previously available to applicant.

Claim 12-16 and 21-22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 17 would be allowable if rewritten to overcome the rejection under 35 U.S.C. § 112 and to include all of the limitations of the base claim and any intervening claims.

The prior art does not teach or suggest the specific construction of a disinfectant containing article of manufacture recited in the instant claims.

This is a file wrapper continuation of applicant's earlier application S.N. 07/864,151. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds of art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See M.P.E.P. § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon the filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jill Warden whose telephone number is (703) 308-4037.

Serial No. 08/120,303  
Art Unit 1809

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

12/13/93  
(703)308-4037

Jill Warden  
Primary Examiner  
Art Unit 1809